IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

TRC.No. 571 of 2001

ORDER DATED 6.9.2001 IN AITA.23/2001 OF KERALA AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOZHIKODE

.....

REVISION PETITIONER:

(V.K.PARVATHY) GOKULAM ESTATE,
CHUNDALE, WAYANAD DIST. -- DIED

ADDL.PETITIONERS 2 TO 6 IMPLEADED

2. E.K.VASAN, GOKULAM ESTATE,
CHUNDALE P.O., WAYANAD.

3. E.K.ANIL, GOKULAM ESTATE,
CHUNDALE P.O., WAYANAD.

4. E.K.SHEELA, GOKULAM ESTATE,
CHUNDALE P.O., WAYANAD.

5. E.K.SINA, GOKULAM ESTATE,
CHUNDALE P.O., WAYANAD.

6. THANKAMMA KUMARAN, GOKULAM ESTATE,
CHUNDALE P.O., WAYANAD.

(ADDL.PETITIONERS 2 TO 6 ARE IMPLEADED AS PER ORDER DATED 29.6.2007 IN IA NO.479/2007)

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALIDHARAN (AROOR)

RESPONDENT:

STATE OF KERALA

BY SPL.GOVT.PLEADER (TAXES) MR.K.B.PRADEEP

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

T.R.C.No.571 of 2001

Dated, this the 5th day of September, 2007

ORDER

H.L.Dattu,C.J.

This Tax Revision Case arises under the provisions of the Kerala Agricultural Income Tax Act, 1991 ("Act" for short).

(2) Aggrieved by the orders passed by the Appellate Assistant Commissioner in ASTA No.829 of 1991 dated 28.11.2001, the assessee had filed an appeal before the Kerala Agricultural Income-Tax Appellate Tribunal, Additional Bench, Kozhikode. Since there was delay in filing the appeal, the assessee had also filed an application under Section 5 of the Limitation Act to condone the delay in filing the appeal.

(3) The Tribunal by its order dated 6th September, 2001 has rejected the application filed by the assessee for condonation of the delay in filing the second appeal. Aggrieved by the said order passed by the Tribunal, the assessee has filed the present Tax Revision Case before this Court. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in declining to condone the delay?
>
> 2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal failed to consider the reasons for condonation of delay stated in the petition in a reasonable and judicial manner particularly when the demand of tax made under the assessment order is very high and requires consideration on merits ?

3) Whether on the facts and in the circumstances of the case, the Appellate Tribunal failed to find that the order of the assessing authority is one passed in violation of the principles of natural justice and the procedure of law prescribed for completion of assessment under the Agricultural Income Tax Act?"

(4) Under Section 78 of the Act, this Court in exercise of its powers of revision can only entertain a petition if the Tribunal has either failed to decide any question of law or erroneously decided any question of law and not in any other circumstance. In the present case, the Tribunal has rejected the application filed by the assessee for condonation of the delay in filing the appeal. The answer given by the Tribunal is purely a question of fact and never be construed as a question of law. Therefore, this Tax Revision Case is not maintainable before this Court and the same requires to be rejected and it is rejected.

Consequently, C.M.P.No.7023 of 2001 is also dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-